

that the executor of diligences must be careful to adhibit such witnesses as can fully and formally sign their names. No. 12.

Dalrymple, No. 80. p. 101.

Fountainhall also reports this case :

John Meek pursues a reduction against one Duncan. It was objected the execution of the summons against him is null ; for, though it be subscribed by two witnesses, yet one of them only subscribes by a mark, or the initial letters of his name ; and though the word witness be adjected, yet it is most defective and illegible, *et non constat* it is done by him. Answered, In some remote places, it is difficult for messengers to get witnesses to their executions who can subscribe *ad longum* ; and here he offered to supply the defect, by adducing the witness to own the subscription, and abide by the verity thereof. The Lords considered that parties contracters, or debtors, their subscribing by initial letters, has been sustained, where it has been adminiculated, by instructing that it was their usual way of subscribing, but it was never pretended in the case of, witnesses ; and the 5th act of Parliament 1681, requiring witnesses to messengers' executions of summonses, puts them in the same case with executions of inhibitions, hornings, arrestments, or intimations. Therefore, in all these respects, they found the execution null, and that Meek behoved to execute anew.

Fountainhall, v. 2. p. 372.

1708. November 23.

SIM against DONALDSON.

A disposition being challenged for want of sidescribing, the objection was repelled in respect the last sheet, duly subscribed, contained all that was material in the disposition.

Forbes.

* * This case is No. 132. p. 16713. *voce* WITNESS.

1711. June 8. The CREDITORS of WILLIAM PATON of Panholls, Competing.

In the competition of the creditors of William Paton of Panholls, an assignation granted by John and Mary Patons, to the said William Paton their eldest brother, subscribed by both the cedents, but sidescribed at the joining of the sheets only by John before two witnesses, being quarrelled by Mr. John Cunningham, schoolmaster in Edinburgh, husband to Mary Paton, as null *quoad* her, upon this ground, that she did not sidescribe it ; it was answered for the other creditors, that no

No. 13.

No. 14.

A writ subscribed by two, and sidescribed at the joining of the sheets only by one of them, sustained as valid *quoad* both.

No. 14. act of Parliament or sederunt requires sidescribing, and contracts of marriage are sustained probative against all the subscribers, though some of them only sidescribe; nor can the want of sidescribing here, be any nullity, seeing John's subscribing and sidescribing before witnesses, doth clearly ascertain the conjunction of the sheets.

The Lords repelled the nullity objected against the assignation.

Forbes, p. 504.

1714. December 18.

JAMES M'DONALD in Comrie, against JOHN M'DONALD, Glover in Fortrose.

No. 15.
A writ found null as not sidescribed, being executed after the act 15, Parl. 1696, establishing the custom of sidescribing.

William M'Donald having granted disposition of some burrow-acres in favours of James his brother; he thereupon intents reduction of an heritable bond granted by the said common debtor in favours of John M'Donald; and it being answered for John, That the disposition being two sheets, was null, as not being signed at the juncture, and nothing written upon the last sheet but words of common stile; he replied, That no statute required the sidescribing of writs, and though in the act 1696, allowing securities to be written book-ways, one clause says, "Providing that if they be written book-ways, every page be marked and signed, as the margins were before;" yet this does not infer an established custom to sidescribe; because, *1mo*, It is not enough that an act presume barely the custom of sidescribing, to make it the rule; but it must also presume that unsidescribed writs are null, which this act does not, but only presumes that margins were signed before; which custom will not infer a nullity in a writ not sidescribed, till it can be shown by a constant uniform run of decisions: Nay, one or two in such a case would not suffice, the law being, *Quod frequenter in eodem controversiarum genere servatum fuit, L. 1. C. Qu. sit long. consuet. far less then can even a constant course of decisions infer so heavy a penalty.*

Duplied for the defender: That certainly in general an unsidescribed security of this kind must justly be thought to be no security, because not given under the hand of the granter, since nothing above the last sheet of a security unsidescribed can be said to be so given; for so it were in the power of any person, to prefix what he pleases to a man's subscription, and bind him thereby; *2do*, This necessity of sidescribing is established by inveterate custom, and the knowledge of every person proves the fact and custom, though *facti*, in this case, needs no other proof; *3tio*, It is evident from the above cited act of Parliament, where not only the words quoted by the pursuer are set down about the middle of the act, but the last words of it are, "Declaring such writs to be as valid and formal, as if written on several sheets battered and signed on the margin, according to the present custom;" where custom is proved with a witness; for if the one be valid and formal, the other must be invalid and informal. And doubtless long